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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

TIGO ENERGY INC.,

Plaintiff,

v.

SUNSPEC ALLIANCE,

Defendant.

Case No. 3:23-CV-00762-WHO

**DEFENDANT SUNSPEC ALLIANCE'S
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF ITS SECOND RENEWED
MOTION TO DISMISS FOR FAILURE
TO STATE A CLAIM PURSUANT TO
FED. R. CIV. P. 12(b)(6)**

Date: September 20, 2023

Time: 2:00 p.m.

Courtroom: 2 – 17th Floor
(via videoconference)

Judge: Hon. William H. Orrick

Action Filed: February 21, 2023

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

Pursuant to Federal Rule of Evidence 201 and this Court’s inherent authority to take judicial notice, Defendant SunSpec Alliance (“SunSpec”) respectfully requests that the Court take judicial notice of the following:

Exhibit A: SunSpec’s Rapid Shutdown Certificate for SMA Solar Technology AG’s Sunny Tripower CORE1 product, August 1, 2019, publicly available at Product Certification Registry Keyword Search Results, SunSpec Alliance, <https://sunspec.org/certified-registry/> (search “RS-000003” in Keyword Search field and click on “Certificate 1” hyperlink in result).

Exhibit B: SunSpec’s Rapid Shutdown Certificate for SMA Solar Technology AG’s SMA TS4-R-F-42 product, August 1, 2019, publicly available at Product Certification Registry Keyword Search Results, SunSpec Alliance, <https://sunspec.org/certified-registry/> (search “RS-000004” in Keyword Search field and click on “Certificate 1” hyperlink in result).

Exhibit C: SunSpec’s Rapid Shutdown Certificate for SMA Solar Technology AG’s Sunny Boy US product, August 1, 2019, publicly available at Product Certification Registry Keyword Search Results, SunSpec Alliance, <https://sunspec.org/certified-registry/> (search “RS-000002” in Keyword Search field and click on “Certificate 1” hyperlink in result).

Exhibit D: SunSpec’s Rapid Shutdown Certificate for Zhejiang Jiaming Tianheyuan PV Tech Co Ltd (JMTHY)’s Rapid Shutdown Box JMS-F product, April 23, 2020, publicly available at Product Certification Registry Keyword Search Results, SunSpec Alliance, <https://sunspec.org/certified-registry/> (search “RS-000009” in Keyword Search field and click on “Certificate 1” hyperlink in result).

This Request is made in connection with SunSpec’s concurrently filed Second Renewed Motion to Dismiss for Failure to State a Claim Pursuant to Fed. R. Civ. P. 12(b)(6).

LEGAL DISCUSSION

When considering a motion to dismiss, a court may look to matters beyond the complaint without converting the motion to one for summary judgment in two scenarios: “(1) a court may take judicial notice of material which is either submitted as part of the complaint or necessarily relied

1 upon by the complaint; and (2) a court may take judicial notice of matters of public record.” *Datel*
 2 *Holdings Ltd. v. Microsoft Corp.*, 712 F. Supp. 2d 974, 983 (N.D. Cal. 2010). Specifically, Federal
 3 Rule of Evidence 201 states that a “court may judicially notice a fact that is not subject to reasonable
 4 dispute because it . . . can be accurately and readily determined from sources whose accuracy cannot
 5 reasonably be questioned.” Fed. R. Evid. 210. Federal Rule of Evidence 201(b) permits the Court to
 6 take judicial notice of any facts “that can be accurately and readily determined from sources whose
 7 accuracy cannot be reasonably questioned.” Fed. R. Evid. 201(b)(2).

8 “[A]s a general matter, websites and their contents may be proper subjects for judicial
 9 notice.” *Caldwell v. Caldwell*, No. C 05-4166 PJH, 2006 WL 618511, at *4 (N.D. Cal. Mar. 13,
 10 2006), *order clarified*, No. C 05-4166 PJH, 2006 WL 734405 (N.D. Cal. Mar. 20, 2006). Indeed,
 11 this Court has taken judicial notice of webpages where the requesting party provided copies of those
 12 webpages for review by the court, and the documents were publicly available online. *See e.g.*,
 13 *Opperman v. Path, Inc.*, 205 F. Supp. 3d 1064, 1069 n. 3 (N.D. Cal. 2016) (“The Court takes judicial
 14 notice of the Yelp Privacy Policies during the relevant time periods because they were publicly
 15 available on the Yelp website and their existence cannot reasonably be questioned.”); *Datel*
 16 *Holdings*, 712 F. Supp 2d at 983-84 (stating that documents available online were “judicially
 17 noticeable for the fact that they exist” since they “are capable of accurate and ready determination
 18 because they are standard documents”); *see also Caldwell*, 2006 WL 618511, at *4 (stating that
 19 because the requesting party did not provide copies of the webpages to be judicially noticed, the
 20 “court is unable to pass on the nature of facts contained within the entire website”).

21 Each of the four certificates for which SunSpec seeks judicial notice is an official certificate
 22 granted by SunSpec for the associated certified products. As such, each is publicly available for
 23 download online from SunSpec’s official website and appropriately verifiable. *See* SunSpec
 24 Alliance, *Product Certification Registry*, <https://sunspec.org/certified-registry/> (last visited August 1,
 25 2023). Furthermore, SunSpec has provided accurate copies of each certificate as Exhibits A-D.

26 Additionally, judicial notice of each of the four certificates by this Court “is appropriate
 27 because Plaintiff’s claim[s] depend[] on these documents.” *Datel Holdings*, 712 F. Supp. 2d at 984.
 28 Here, Tigo’s allegations of direct infringement by SunSpec and third-party testing laboratories

necessarily rely on allegations about the rapid shutdown certification granted to each of those products. *See, e.g.*, SAC, ¶ 30, 33, 103, 134. Indeed, Tigo even *references* these certificates in its SAC, but fails to attach a single one to the complaint. *See* SAC, ¶ 33 (identifying SunSpec certified products, including: “. . . SMA Sunny Boy US (“ . . . SunSpec Rapid Shutdown Transmitter) (certification RS-000002), SMA Sunny Tripower CORE1 (includes SunSpec Rapid Shutdown Transmitter) (certification RS-000003), SMA TS4-R-F-42 (certification RS-000004), . . . Zhejiang Jiaming Tianheyuan Photovoltaic Technology Co Ltd (JMTHY) Rapid Shutdown Box (certification RS-000009) . . .”). As such, judicial notice of certificates for these four products is appropriate given that Tigo has relied on and referenced them in its SAC, and SunSpec therefore respectfully requests that this Court take judicial notice of Exhibits A-D.

Dated: August 1, 2023

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By: /s/ Philip W. Marsh

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